

### **SUPPORT FOR AMENDMENTS**

Support for new claims 27 and 28 exists, *inter alia*, at page 2, lines 29-31 and page 7, lines 15-18.

Claims 1, 3-21 and 23-28 are currently pending.

### **REMARKS**

The pending claims relate to solid compositions comprising an aqueous phase dispersed in an oily phase, a silicone emulsifier, and at least 3% wax, wherein the composition comprises at least 70% water, the aqueous phase represents at least 75% of the composition, and the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5. Thus, the presently claimed invention is directed to water-in-oil (W/O) compositions having a large amount of aqueous phase and water, while having a relatively small amount of silicone emulsifier.

As noted in the present specification, W/O compositions are generally desirable for at least the reason that such compositions have an internal aqueous phase which allows hydrophilic active agents to be more effective. (Page 1, lines 20-23). However, such compositions typically are uncomfortable upon application due to the greasy or heavy feeling resulting from the external oil phase of these compositions remaining on skin. (Page 1, lines 24-26). While the preparation of W/O emulsions having a high water content has been envisaged, (page 1, lines 28-29), the water content cannot be too high in such compositions for stability reasons without being compensated for by adding several surfactants or gelling agents, ingredients which can be problematic upon application to skin. (Page 1, line 29 through page 2, line 3).

The presently claimed compositions address such problems associated with high water content W/O emulsions. These compositions, despite their high water content, are stable. (Page 2, lines 27-28). Moreover, the claimed compositions give a strong impression of freshness upon application (that is, not greasy or heavy). (Page 2, lines 8-10). As such, the claimed compositions are novel and represent an advance in the art deserving of patent protection.

In view of this background, the rejections made in the outstanding Office Action will now be addressed.

#### **REJECTION UNDER 35 U.S.C. §112**

The Office Action rejected claims 1 and 25 under 35 U.S.C. § 112, second paragraph, as being indefinite for containing open-ended numerical ranges. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Applicants respectfully submit that claims 1 and 25 set forth sufficient information to allow one skilled in the art to ascertain the amount of claimed ingredients present in the claimed compositions and, thus, that the numerical limitations in these claims are definite. Specifically, the claims explicitly set forth minimum amounts for wax, water and the aqueous phase totaling at least 78% of the composition. This information, combined with the common knowledge that the claimed compositions can only contain 100% of added ingredients in total, would allow one skilled in the art to determine how much of the claimed ingredients could be added above the minimum amounts required to satisfy all of the claim limitations.

Moreover, the claims require a specific oily phase to surfactant ratio as well as specific compressive strength characteristics. This information would further aid one skilled

in the art in determining how much of the claimed ingredients to add. For example, one skilled in the art would know that he could not add too much surfactant or too little oily phase such that the claimed oily phase to surfactant ratio would not be satisfied. Similarly, one skilled in the art would know that he could not add too much or too little solid and/or liquid ingredients such that the claimed compressive strength characteristics would not be satisfied.

In view of the above, Applicants respectfully submit that claims 1 and 25 are definite and that, accordingly, the rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

### **REJECTION UNDER 35 U.S.C. §103**

The Office Action rejected claims 1, 3-21 and 23-26 under 35 U.S.C. § 103 as obvious over U.S. patent 5,851,539 ("Mellul"), either alone or in combination with U.S. patent 5,919,468 ("Bara") or KR 9202286 ("Kang"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Mellul neither teaches nor suggests W/O emulsions containing at least 70% water **and** an aqueous phase of at least 75%. Mellul states that her compositions' aqueous phase could be 10-90% of the composition. (Col. 7, line 51). However, Mellul does not indicate how much of the aqueous phase should be water. Moreover, Mellul does not exemplify compositions containing at least 70% water **and** an aqueous phase of at least 75%.

In fact, Mellul's examples actually lead one skilled in the art away from such compositions. Mellul's examples 1-15 and 22-25 contain 70% water, 5-10% surfactant and 20-25% oil. As Mellul's examples incorporate more ingredients, the amount of water decreases. (See, examples 26-33). Thus, based on Mellul's disclosure, one skilled in the art,

seeking to produce compositions containing ingredients in addition to water, oil and surfactant, would use less than 70% water.

Furthermore, Mellul neither teaches, suggests, nor recognizes the significance of having at least 3% wax present. Mellul merely states that waxes can be incorporated into her emulsions as part of the oil phase (col. 6, lines 27-36), but does not state that waxes must be present (or that they must be present in a specified amount). Moreover, Mellul does not exemplify any compositions containing wax. In contrast, the claimed invention requires the presence of at least 3% wax.

Thus, Mellul fails to teach, suggest or recognize the importance of several of the required individual elements of the claimed invention, and nothing in Mellul suggests modifying all of these elements to yield the claimed invention. Similarly, nothing in Mellul would lead one skilled in the art to expect that it would be possible to obtain a solid composition which is “fresh” upon application to skin by combining the amounts of water, silicone surfactant, and wax required by the claims.

Bara and Kang do not compensate for Mellul’s deficiencies. Bara relates to using certain organopolysiloxanes to mattify skin. Kang relates to emulsions containing electrolytes. Neither of these references teaches or suggests w/o compositions containing all of the claimed invention’s required elements including a silicone surfactant, at least 70% water, at least 75% aqueous phase and at least 3% wax.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. §103 should be withdrawn.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



**22850**

Tel #: (703) 413-3000  
Fax #: (703) 413-2220

A handwritten signature in black ink, appearing to read 'R. Treanor', written over a horizontal line.

Richard L. Treanor  
Attorney of Record  
Registration No. 36,379

Jeffrey B. McIntyre  
Registration No. 36,867

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Claims 27-28 (new)